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January 25, 2008

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex O)
600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Re: AF&PA Comments on Carbon Offset Workshop—Comment Project No.
P074207

To Whom it May Concern:

The American Forest & Paper Association (AF&PA) is pleased to file these comments in response to the above-referenced Federal Register notice, and to issues raised during the January 8th workshop. AF&PA is the national trade association of the forest, paper, and wood products industry. AF&PA represents more than 200 companies and related associations that engage in or represent the manufacture of pulp, paper, paperboard, and wood products. AF&PA worked closely with FTC staff as they developed the FTC Environmental Guides' provisions pertaining to recycled paper and paper products.

Introduction

AF&PA and its members are actively engaged in numerous arenas developing policies regarding carbon offsets and other aspects of programs to address climate change, as well as policies pertaining to Renewable Energy Credits (RECs). AF&PA members also are members of the Chicago Climate Exchange and EPA's Climate Leaders program, and some members' facilities sell Renewable Energy Credits (RECs). AF&PA, therefore, has a direct interest in the FTC's Commission's regulatory review of the Guides for the Use of Environmental Marketing Claims.

We do not have significant experience with claims regarding offsets or RECs or consumers' reactions to, or perceptions of, those claims. Therefore, we do not have sufficient information to answer most of the specific questions asked in the Federal Register notice. Instead, our comments are based in part on our experience in the programs mentioned above, as well as from our participation in the workshop. We also plan on providing comments in response to the other Federal Register notice regarding the Green Guides.

Comments

AF&PA Supports the FTC Description of the Limits to its Authority: The Federal Register notice provides a clear description of the FTC's role in its review of its environmental marketing guidelines: "The FTC does not have the authority or expertise to establish environmental performance standards. Accordingly, we do not plan to develop environmental standards for carbon offsets and RECs. Instead, the FTC's efforts in this area will focus on our traditional consumer protection role, addressing deceptive and unfair practices under the FTC Act."

We believe the role articulated in this statement is especially important in areas such as carbon offsets and RECs that are still developing, and, as was clear from the workshop, still have major policy and technical issues on which consensus has not yet been achieved. The FTC needs to make sure that its guidelines do not cross the line into establishing performance standards for these still developing products.

The FTC Should Provide Information to Better Explain the Concerns Driving its Review. Several speakers at the workshop mentioned that carbon offsets and RECs are becoming more common in the consumer marketplace. The agency, however, did not provide any explanation regarding what claims are being made to consumers regarding offsets and RECs that cannot be handled under its existing rules and guidelines, particularly those requiring substantiation of actual and environmental benefit claims. Identification of those claims that are raising concerns within the FTC about possible deceptive or unfair practices would facilitate a more robust discussion among stakeholders on the need for additional guidance and what that guidance might contain.

The FTC Should Not Attempt to Set a Standard for Additionality. The Federal Register notice asks several questions pertaining to additionality and consumers' perceptions of what they believe they are buying when they purchase an offset or a REC. Also, during the workshop, FTC staff stated that consumers believe their purchases will "make a difference" and that this belief somehow translates into a consumer expectation that an "additional" unit of carbon reduction is necessary for an offset to be genuine. Under this logic, therefore, the FTC would need to establish an additionality requirement for offsets and RECs.

We do not believe that this train of logic has an adequate foundation. It is unclear that consumers even understand the concept of additionality or that they have any reason to assume that an offset or REC they are purchasing has an additionality component. This point was made by one of the EPA speakers during the last panel discussion.

Even if it was clear that consumers have an expectation of additionality, there is no "one size fits all" standard that the agency could use as an example of acceptable additionality or as the basis for a discussion in its guidelines. Numerous programs have their own definitions of additionality that address the issue differently (e.g., Chicago Climate Exchange, U.S. Department of Energy Section 1605(b) guidelines) and the panelists and others working on these issues have differing additionality standards. Indeed, when the FTC staffer asked what he thought would be an "easy" question on additionality (regarding actions taken to fulfill regulatory requirements), even that did not elicit unanimous responses from the panel.

If the FTC feels it must, nonetheless, address additionality, it should establish requirements for transparency in additionality claims. It should also deem acceptable additionality claims that are substantiated by reference to recognized programs defining additionality for offsets and RECs.

The EPA Climate Leaders Program Should Not be the Basis for an Acceptable Offset.

As indicated by the EPA speaker, the Climate Leaders program is a voluntary program that intends to set a very high bar for an acceptable offset program (top 20-25%). Thus, its requirements for all aspects of offsets are intended to be very stringent.

The FTC should recognize the nature of the Climate Leaders program (that it intends to establish a high standard, not an acceptable minimum standard) and should not consider the Climate Leaders program requirements as the baseline for an acceptable offset. EPA's approach to additionality--the performance standard approach--is not the only approach recognized by authoritative protocols. For instance, the WRI/WBCSD Greenhouse Gas Protocol initiative recognizes both performance standard and project specific approaches to additionality. Adopting the performance standard approach would unnecessarily limit the options.

The FTC Could Provide Helpful Guidance on Substantiation. We recommend that the FTC concentrate on clarifying how claimants should substantiate their claims. For example, the FTC could require that claimants spell out the standard, program, or criteria on which the claimant is basing its claim, either in the claim itself or on a website referenced in the claim. The FTC should require that this explanation contain the parameters, definitions, and other relevant information applicable to the claim. The FTC should not require third party verification of claims, as long as this substantiation is provided. This is a consistent approach with earlier guidance the agency has provided regarding environmental marketing claims.

Conclusion

Thank you for the opportunity to submit comments on this important issue. We encourage the agency to consider these points as it continues its review of its guidelines. Please call me at (202) 463-2581, if you have any questions.

Sincerely,

Jerry Schwartz
Senior Director